

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000300-001 DT

04/01/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

KARA L GERANIS

v.

JONATHAN DOUGLAS JONES (001)

CRAIG W PENROD

REMAND DESK-LCA-CCC
TEMPE CITY COURT

RECORD APPEAL RULE / REMAND

TEMPE MUNICIPAL COURT

Cit. No. #1124057

Charge: A) IMPROPER POSITION; RIGHT TURN
 B) DUI-LIQUOR/DRUGS/VAPORS/COMBO
 C) DUI W/BAC OF .08 OR MORE

DOB: 10/17/79

DOC: 01/01/02

The Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on February 9, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Tempe City Court and the memoranda and oral arguments submitted by counsel in this case.

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Appellant, Jonathan Douglas Jones, was charged with three offenses: (1) Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1); (2) Driving With A Blood Alcohol Content In Excess of .08, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2); and (3) Improper Right Turn, a civil traffic violation, in violation of A.R.S. Section 28-751.1. Appellant entered pleas of not guilty. Appellant filed a Motion to Suppress based upon his claim that the Tempe Police officer lacked reasonable grounds to believe that an offense had been committed warranting the traffic stop. The Court conducted an evidentiary hearing upon Appellant's motion on December 20, 2002. At the conclusion of the evidentiary hearing, the trial judge concluded that the officer did articulate reasonable grounds to make the traffic stop. The trial judge denied Appellant's motion. Thereafter, the parties submitted the case to the court based upon stipulated facts and evidence. Following the finding of guilt and sentence, Appellant filed a timely Notice of Appeal in this case.

Appellant claims that the trial court erred in failing to suppress all evidence gathered after an unreasonable stop of Appellant. Appellant claims that the Tempe Police officers did not have a "reasonable suspicion" which would justify the stop of Appellant's vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from the facts, reasonably warrant the police officer's suspicion that the accused, committed, or was about to commit, a crime.¹ These facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."² A.R.S. Section 13-3883(B) also provides, in pertinent part, authority for police officers to conduct a "investigative detention":

A peace officer may stop and detain a person as is reasonable necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.³ In *Whren*⁴, the United States Supreme Court upheld the District's Court denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they

¹ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); *State v. Magner*, 191 Ariz. 392, 956 P.2d 519 (App. 1988); *Pharo v. Tucson City Court*, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

² *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed. 2d 621, (1981).

³ *Whren v. United States*, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

⁴ *Id.*

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used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.⁵

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.⁶ An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.⁷ This Court must review those factual findings for an abuse of discretion.⁸ Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.⁹ This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.¹⁰

In this case, the trial judge entered an order describing the reasons for denying Appellant's Motion to Suppress. The trial judge stated:

...this maneuver occurred, whether Mr. Jones turned in from curb-to-curb and then went over (and) made a wide right turn from the curb lane to the median lane, 28-1594 says that the officer can make a stop if he suspects that a violation of Title 28 has occurred. He (the officer) has testified that he's given specific observations...and on that basis, he could make the stop as I read 1594... My job is to determine whether or not this officer could present some reason based on something that he observed that he can articulate to make this stop. I do find that he did.... I am denying the Motion to Suppress.¹¹

The trial judge's ruling is supported by the record in this case. Tempe Police Officer Corder testified that he observed Appellant make a wide right turn at an intersection, and later charged Appellant with violating A.R.S. Section 28-751.1. Corder's observation of this offense constitutes a clear factual basis for the trial judge's ruling. This Court also determines *de novo*,

⁵ Id.

⁶ *State v. Gonzalez-Gutierrez*, 1987 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Magner*, supra.

⁷ Id.

⁸ *State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

⁹ *State v. Chapple*, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.

¹⁰ *State v. Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778; *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.

¹¹ R.T. of August 18, 2003, at page 30.

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that these facts establish a reasonable basis for the Tempe Police officers to have stopped the automobile driven by the Appellant. This Court finds no error.

Appellant also contends that the trial judge shifted the burden of proof from the State to the defendant when the trial judge was explaining his ruling and used the phrase “so weighing all of this - - if that’s all I had - - it would be a toss-up.”¹² Appellant argues that the trial judge determined that the case was a toss-up, and therefore shifted the burden of proof to the Appellant in the suppression hearing. However, reading the trial judge’s comments in context, it appears that the trial judge did not find that the evidence was a toss-up. The trial judge went on to later find that Appellant had made a wide turn at an intersection, as quoted above. This Court finds that the trial judge did not shift the burden of proof in the evidentiary hearing.

IT IS THEREFORE ORDERED affirming the judgments of guilt and findings of responsibility and the sentences and sanctions imposed in this case.

IT IS FURTHER ORDERED remanding this matter back to the Tempe City Court for all further and future proceedings in this case.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

¹² R.T. of August 18, 2003, at page 30.
Docket Code 512